IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

Rameshwar Lal vs. Union of India & Anr.

S.B.Civil First Appeal No.60/1984 under Section 96 C.P.C. against the judgment and decree dated 25.10.1983 passed by Shri Amresh Kumar Singh RHJS, Additional District Judge No.1, Jaipur City, Jaipur in Civil Suit No.87/1977 (68/1977).

Date of Judgment :::::: July 25, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.J.P.Goyal for appellant.
Mr.Sushil Sharma, Standing Counsel for UOI.

BY THE COURT (ORAL):-

The facts leading to this appeal in brief are that the plaintiff appellant instituted a suit against the defendants for recovery of Rs.15,100/- mentioning there in that on 30.3.1974, the plaintiff sent an insured parcel from Post Office, Johari Bazar, Jaipur to Shri Laxmi Jewellers, Coimabtore. The said parcel was insured for a

sum of Rs.10,000/- and it contained 11 bangles of 22 carat gold weighing 207.350 grams along with an excise voucher No.1478. The said parcel was duly packed and sealed when it was delivered to the Post Office. It was further pleaded that the said parcel was not accepted by Shri Laxmi Jewellers, the addressee because it was in damaged condition and the plaintiff was informed on 6.4.1974 accordingly. It was the case of the plaintiff that on receipt of the said parcel back by Post Office at Jaipur, the same was delivered to Rameshwar Lal on 9th April,1974 in open condition and instead of the gold bangles four pieces of stones were found. Weight of stones and packed material was found to be of 263 grams. As per the case of the plaintiff, the cost of the gold bangles was Rs.10,265/- but it was insured for Rs.10,000/- in round figure. As per the case of the plaintiff since the respondents denied the payment of compensation, a notice under Section 80 C.P.C. was sent to them and thereafter the suit was filed for recovery of Rs.15,100/-.

2. The respondents filed the written statements and although admitted the facts regarding receipt of an insured parcel from the plaintiff for the amount of Rs.10,000/-, about sending of information to the plaintiff on 9.4.1974 regarding return of the parcel in damaged condition and

preparation of inventory in the presence of the plaintiff and also the fact that the weight of the parcel was found 263 grams but it was denied that the parcel contained gold bangles. An objection was also raised that since it was not declared that the parcel contained the gold ornaments and its price was also not declared as per the Indian Post Office Rules, the defendants were not liable to pay the damages. The specific case of the defendants was that as per the Indian Post Office Rules, a parcel containing the gold or gold ornaments costing more than a sum of Rs.2500/- (Rs.5,000/- at the relevant time) could not have been sent through parcel. Claims of the plaintiff regarding loss of profit and that of damages and interest were also disputed.

3. On the basis of the pleadings of the parties, learned trial court framed as many as 14 issues.

4. To prove his case, the plaintiff examined six witnesses namely; PW.1 Rameshwar Lal, PW.2 Nand Kishore, PW.3 Ramesh J Gudwani, PW.4 Kailash Raj Aroda, PW.5 Arjun Lal and PW.6 Manak Chand. In defence, the defendants examined DW.1 Suresh Chand Jaiman.

5. After recording evidence of both the sides and hearing the parties, the learned trial court vide impugned judgment

and decree dated 25th October, 1983 dismissed the suit of the in view of violation of Rules 44, 81 and 83 of the Indian Post Office Act.

6. Feeling aggrieved of the impugned judgment and decree, the plaintiff has filed the present appeal.

7. Learned counsel for the appellant contended that the trial court has neither critically examined the evidence of the parties nor properly applied the provisions of the Indian Post Office Rules, 1933 (hereinafter referred to as `the Rules') and thus, seriously erred in law and fact in deciding the suit.

8. After hearing learned counsel for the appellant, I have gone through the impugned judgment and the material available on record as well as the relevant provisions of the Rules.

9. Rule 44 (1) of the the Rules prohibits transmission by post of the Gold Coin or bullion or both of value exceeding Rs.2,500/- (substituted to Rs.5,000/- vide Government of India Gazette Notification dated November 4, 1972). It further provides that the value of the good for the purpose of this sub-rule shall be recognised as per

second proviso to rule 72, clause (g) of the second proviso to rule 81 and rule 83 on the basis of the `market value' of the good on the date and at the place of posting. Rule 83.A mandates the sender of the Government Currency notes, bank note, gold coin, bullion or gold ornaments or articles of gold or any combination of these, to declare on the article, the value of the content at the time of dispatch. Rule 81 of the Rules provides for payment of compensation to the sender of an insured postal article and provides that compensation shall be paid to the sender of an insured postal article for the loss of postal article or any of its content or for any damage caused to it in course of transmission by post but such compensation can not exceed the amount for which the article has been insured. Proviso 2 to rule 81 of the Rules provided the circumstances where no compensation is payable. Clause (g) of proviso 2 to rule 81 of the Rules provides that compensation shall not be paid to the sender where the insured article contains Government currency note, bank note, gold coin or bullion or any combination of these and has not been insured for the actual value of the content. Sub-clause (ii) of clause (h) proviso 2 of the aforesaid rule further provides that no compensation shall be payable where the insured article contained anything the transmission of which by post is prohibited. From the above quoted provisions of law, it is

clear that:-(i) transmission, by post, of gold coin or bullion or both of the value exceeding Rs.5,000/- (prevalent at the relevant time) was prohibited under Rule 44(1) of the Rules; (ii)in view the provisions of Rule 83.A of the Rules, sender of the articles containing government currency note, bank note, gold coin, bullion or gold ornaments or articles of gold or any combination of these was required to declare on the article the value of the content at the time of dispatch; and (iii) in view of provisions of Rule 81 no compensation is payable where the insured article containing Government Currency note, bank note, gold coin or bullion or any combination of these has not been insured for the actual value; and where the insured article contained anything, the transmission of which by post is prohibited.

10. On the basis of the evaluation of the evidence of the parties available on record it is clear that the value of the gold ornaments transmitted by post by the plaintiff exceeding Rs.5,000/- the ceiling fixed under rule 44(1) of the Rules as in the plaint itself the case of the plaintiff was that the value of the gold bangles was Rs.10,265/-. Therefore, transmission of the article by post was prohibited and in view of clause (h)(ii) of proviso 2 to rule 81 compensation was not payable to the plaintiff. From

the plaint and from the evidence of the plaintiff and his witnesses it is also clear that as against the real value of the gold bangles i.e. Rs.10,265/- the plaintiff got insured the same for Rs.10,000/- and thus, in view of clause (g) of proviso 2 to Rule 81 of the Rules, compensation was not payable to the plaintiff. PW.3 Ramesh J.Gidwani in his statement has clearly admitted that contents and value on parcel Ex.A.2 was not written. While as per the provisions of Rule 83A it was obligatory for the plaintiff to declare on the article the value of the contents. Thus, there has been clear violation of Rule 83.A of the Rules.

11. In the circumstances, therefore, it must be concluded that the learned trial court while recording findings on issues Nos.3,9 and 12 has appreciated the evidence and applied the provisions of the Rules in true perspective and rightly dismissed the suit of the plaintiff. Hence the judgment and decree impugned in this appeal call for no interference.

12. For the discussions above, the first appeal fails and is, hereby dismissed.

(K.C.Sharma),J.

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